

## **REQUEST FOR PROPOSALS (RFP)**

**Associated with the Proposed  
Phase II Homeownership Development of Southside**

**Through this Request for Proposals the City of Durham is  
soliciting Proposals from qualified Builders and/or Developers  
for the Phase II Homeownership Development of Southside**

**Date of Issue: April 21, 2017**

**Pre-Proposal Conference, 2:00 PM May 8, 2017  
Dept. of Community Development  
807 E. Main Street, Ste. 2-200  
Durham, NC 27701**

**Submittals Due: June 14, 2017 at 4:00 PM EST**



**Project Contact(s):**

**Shepherd Smith  
Department of Community Development  
807 E. Main Street, Suite 2-200  
Durham, North Carolina 27701  
[shepherd.smith@Durhamnc.gov](mailto:shepherd.smith@Durhamnc.gov)  
919.560.4570**

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## **10. NATURE OF REQUEST FOR PROPOSALS**

The Southside project area as shown on Exhibit A, encompasses approximately 125 acres and is generally bounded by Lakewood Avenue on the north, the American Tobacco Trail on the west, Umstead Street on the south and Fayetteville Street on the east. The former 19-acre Rolling Hills site is located in the northeast quadrant of the project area.

While it has affordable housing elements, the Southside initiative is first and foremost a neighborhood revitalization project having the objective of attracting long term private investment. To accomplish this objective, high quality and attractive homeownership and rental development targeting a broad range of incomes is taking place in the neighborhood. Given its downtown location and its proximity to North Carolina Central University (NCCU) and the Durham freeway, the relatively compact neighborhood is ideally positioned for residents seeking to live near their work and amenities. The American Tobacco Campus, the Durham Bulls Athletic Park and the Durham Performing Arts Center are within walking distance.

Creating a mixed-income neighborhood attracting new homeowners and renters having geographic choice was one of the driving visions behind the Request for Qualifications (RFQ) issued by the City to select an experienced rental developer for the Rolling Hills site. Through the RFQ, the City selected St. Louis-based McCormack Baron Salazar (MBS) for the rental component of the Southside project.

In June 2012, the Durham City Council approved an agreement with MBS for it to develop two phases of mixed-income rental housing on the former Rolling Hills site. Phase I consisting of 119 rental units and 13 “live-work” units in twelve buildings was completed by December 31, 2015. Eighty of the rental units are affordable Low Income Housing Tax Credit units serving households with incomes at or below 60% AMI.

The visual centerpiece of the first phase is a pond at the corner of Lakewood and Roxboro Streets that functions both as a storm water management tool and an amenity by incorporating a permanent water level and fountains.

The second phase of mixed-income rental by MBS will consist of 85 units located adjacent to the first phase along S. Roxboro Street. The second phase, which has received an allocation of Low Income Housing Tax Credits is now under construction, and should be completed by December 2017. Phase II will contain 58 affordable units serving households at or below 60% AMI.

Concurrent with the City’s efforts to acquire the remaining privately-owned properties on the Rolling Hills site, the Center for Community Self-Help (Self-Help) began the acquisition of more than 100 properties in the Southside neighborhood on the west side of S. Roxboro Street. Self-Help primarily targeted vacant and boarded properties that were sources of blight in the neighborhood for future homeownership development.

Subsequently, the City of Durham acquired 71 of the Self-Help owned parcels in Southside for development as Phase I of The Bungalows at Southside. A site plan for the homeownership development was submitted by Haden Stanziale. The approved site plan and associated re-platting of existing lots created a total of 48 lots for the construction of new homes. Through an RFP process, the City selected D.H. Griffin to install new water and sewer lines, regrade and re-plat the 71 lots to provide ready-to-build lots. All 48 houses were completed, sold and occupied over a two year period, with the last house closing in January of 2017.

Through an RFQ process, the City selected two builders; A. Roby Construction and B. Wallace Construction as the only approved builders to construct the homes on the 48 lots. The lots were sold to the builders as buyers were identified and qualified, requiring 51% of all homebuyers to be low-to-moderate income households. All of the homes have been constructed, closed and occupied, as of January 2017.

Through an RFQ process, the City selected Durham Community Land Trustees to acquire and rehabilitate the existing structures, or build new homes on 7 lots located on the south side of Piedmont Avenue between Roxboro Road and Scout Drive. Three of the structures are duplexes, thereby producing 9 units.

The current situation of the Beamon assemblage is that Beamon St has been closed by the City and that portion of the road that lies between the Gethsemane Church and the church parking lot across Beamon, has been transferred by the City to the church. Working with Stewart Engineering, the City has recombined and subdivided the former Beamon St. cul-de-sac and the adjoin lots on E. Piedmont Street and created a new site plan. This site plan has been approved and finalized by the City and should be relied upon in formulating proposals. A full set of plans and specifications are available through the Department of Community Development.

## **20.PROPOSED DEVELOPMENT DESCRIPTIONS**

A. Subject Area - Through this RFP, the City intends to select a business entity that will develop the former Beamon Street assemblage site together with several scattered sites in Southside by installing all site prep and infrastructure including, but not limited to water, sewer and all utility lines, grading, installation of roads, curbs and sidewalks and removal of any excess soil from the site. In addition, the City intends to select through this RFP a qualified builder that will complete construction of single family homes on the 19 lots known as the Beamon Street assemblage as shown on Exhibit B, as well as 2 lots at 902 and 904 S. Roxboro St. that are adjacent to the Beamon Street assemblage and 2 lots at 106 and 108 E. Piedmont Avenue, across from the Beamon Street assemblage, as shown on Exhibit C, all to be known as Phase II of The Bungalows at Southside. The business entity mentioned above may consist of one organization that is qualified to develop the site and build the homes, or it may be a partnership of separate companies to develop and build. In addition, the successful

entity may be a for-profit, non-profit organization, or a combination of both. Because of the funding sources used to acquire the building sites from Self-Help, not less than 51% of the homes constructed and sold must be owned and occupied by households with incomes at or below 80% of the Area Median Income (AMI) as shown on Exhibit A. However, it is the City's intent that this development of Phase II be compatible in size, style and architecture of the houses built in Phase I. In addition, all homes sold to low-mod income families must meet the program requirements of System Vision and be certified by Advanced Energy to guarantee the cost of heating and cooling energy for a two year period. Sales of new homes must maintain the ratio of at least 51% income qualified purchasers at all times throughout the build-out period. This means that the first two homes sold, must be sold to income qualified persons or families.

Through this RFP, the City is soliciting proposals from respondents who will present their vision, ideas and plans for the installation of the necessary site prep and infrastructure and the building of dwelling units, to be known as Phase II. It is the intention of the City to invite proposals that are creative and innovative and not limited to pre-conceived ideas of whether it includes single family, multi-family, or a combination of the two. The proposals must be specific as to what the development plan will consist of, including all site prep and infrastructure necessary to support development in the Beamon Street assemblage and the scattered sites included in this proposal. Proposals must also include the costs and strategies, including a detailed development budget and sources and uses. Proposals must also include the number and design of the exterior of new dwelling units. Each proposal must include a detailed construction timetable for each element of the development and must detail the costs associated with each item. If the responder is anticipating any contribution from the City (either monetary, real estate or other), that must be clearly specified in the proposal.

A major component of any proposal submitted, must include a detailed plan to establish and preserve a period of affordability for households at or below 80% of the AMI for a minimum of 5 years or longer. The five year period of affordability is a threshold requirement with additional bonus points awarded for extending the period of affordability. This may occur through the imposition of restrictive covenants, by utilizing a land trust model, or any other means that will ensure the period of affordability can legally stay in place for the duration.

Should the applicant's plan include a request for any contribution from the City; either land, financial contribution, or any other sort of contribution it must be clearly stated in the response.

### **30. ANTICIPATED SCHEDULE FOR DELIVERY**

- A. Project Schedule. The project schedule set forth herein represents the City's desires and expectations. The proposed schedule is as follows:

Request for Proposals Issued:	April 21, 2017
Pre-Proposal Conference held at 2:00 pm on	May 8, 2017
Dept. of Community Development, 807 E. Main Street	
Ste. 2-200, Durham, NC 27701	
Written Question and Response Period closes:	May 31, 2017
Written Questions and Responses Posted:	May 31, 2017
Proposals Due - 4:00 PM	June 14, 2017
Evaluation of Proposals:	June 23, 2017
Execution of Contract:	July 7, 2017

#### **40. PROPOSAL FORMAT AND CONTENT**

Submittals shall be addressed and delivered as follows:

**Request for Proposals – Builders and/or Developers for the Phase II Homeownership Development of Southside**  
**Attn: Shepherd Smith, Department of Community Development**  
**807 E. Main Street, Suite 2-200**  
**Durham, North Carolina 27701**  
[shepherd.smith@durhamnc.gov](mailto:shepherd.smith@durhamnc.gov)

**Re: RFP Submission from \_\_\_\_\_**

Submission **must** include **five (5)** original hard copies of the entire proposal and one electronic copy of the entire proposal.

##### **A. Proposal Format and Content**

The City discourages overly lengthy and costly proposals; however, in order for the City to evaluate proposals fairly and completely, offerors should follow the format set out herein and provide all of the information requested.

##### **B. Introduction**

Proposals must include on organization's letterhead the complete name and address of the firm and the name, mailing address, and telephone number of the person the City should contact regarding the proposal.

Proposals must confirm that the firm will comply with all of the provisions in the request, and if applicable, provide notice that the firm qualifies as a City of Durham bidder.

Proposals must be signed by a company officer empowered to bind the company. An offeror's failure to include these items in their proposals may cause their proposal to be determined to be non-responsive and the proposal may be rejected.

##### **C. Understanding the Project**

Offerors must provide a comprehensive narrative Statement that illustrates their understanding of the requirements of the project and the project schedule.

D. Management Plan for the Project

Offerors must provide a comprehensive narrative statement that sets out the plan they intend to follow and illustrate how their plan will serve to accomplish the work and meet the City's project schedule. Additionally, the plan must include a proposed schedule with projected milestones.

E. Experience and Qualifications

Provide a summary of the firm's experience in installing infrastructure for residential housing and the firms' experience in building and marketing single family homes or multi-family homes should that be relevant to this RFP. Provide a narrative description of the firm's team and statement of experience in undertaking and successfully completing comparable projects for all members of the team.

F. Cost Proposal – N/A

G. Evaluation Criteria

All proposals will be reviewed to determine if they are responsive. They will then be evaluated using the criteria set out in the section below.

## 50. QUESTIONS ON THE RFP PROCESS

A. Questions and Responses. Questions regarding this RFP shall be submitted to the City designee(s) identified within the RFP, **in writing, via electronic mail only**.

Questions submitted via telephone, facsimile, in-person, in hardcopy, or via any other means are not permitted.

B. Updates and Revisions to RFP. This RFP provides complete information on the qualifications sought, the services contemplated, the submittal requirements, and the desired development schedule.

Updates to the RFP (if any) will be issued at the discretion of the City. Any revisions will be posted on the City's Purchasing Division webpage in the form of an addendum. Copies of the RFP and any addenda may be downloaded at: <http://durhamnc.gov/bids.aspx>.

To receive notification of updates to this RFP (if any), proposers may contact the City designee(s) identified herein to register as an interested proposer. Such registration withstanding, ultimate responsibility remains at all times with the proposer to ensure they have received and can comply with any updates.

C. Pre-Proposal Conference. The City will conduct a Pre-Proposal Conference on the date and time indicated herein. During the conference, City designees will endeavor



to provide responses to, and/or additional clarification for, any questions submitted in writing through the date of the conference.

## **60. COVER LETTER WITH RFP**

A. Cover Letter. The RFP should contain a cover letter, signed by a principal(s) of the legal entity(s) under which the proposer submits the RFP. The cover letter should contain the following statement:

*The undersigned, whose title and position with the proposer is stated next to or beneath his or her signature, has the authority to submit this RFP (including this cover letter) on behalf of the proposer in response to the City of Durham's Request for Qualifications.*

*Unless otherwise clearly stated in this response to the RFP, our RFP accepts the terms and conditions stated in the RFP, including the description of services to be performed and the provisions of the agreement to be signed.*

Cover letters shall contain one (1) of the following paragraphs (a) or (b). If (i) the cover letter lacks both paragraph (a) and paragraph (b), or (ii) the cover letter contains paragraph (a) but fails to comply with the instructions in the section of the RFP titled "Trade Secrets and Confidentiality," the City may treat everything it receives from the proposer as NON trade secret or confidential, and the City may disclose to the public everything it receives from the proposer.

*(a) With respect to all trade secrets that the proposer may submit to the City in connection with this RFP or the contemplated agreement, if should an agreement be negotiated with the proposer, the proposer shall comply with the section of the RFP titled "Trade Secrets and Confidentiality," including all of its subsections, including the subsection titled "Defense of City." The proposer acknowledges that the City will rely on the preceding sentence.*

**-or-**

*(b) The proposer is not submitting any trade secrets to the City in connection with this RFP or contemplated agreement; should an agreement be negotiated with the proposer, the proposer will not submit any trade secrets to the City in connection with this RFP or the agreement. The proposer acknowledges that the City will rely on the preceding sentence.*

This RFP is not an offer, and the proposer retains the right to decline to enter into an agreement with the City for the proposed project.

B. Addendums. Cover letters shall list the last addendum that the City issues for this RFP, using the statement that follows:

*The undersigned proposer has read all the addendums issued by the City for this RFP, through and including Addendum No. \_\_\_\_.*

The proposer shall list the number of the last addendum in the blank indicated.

## **70. CONTENTS OF RFP**

A. Contact information. Include the legal entity name and address of the proposer, and the contact information (name, mailing address, email address, web address, and telephone number) of the person whom the City should communicate regarding the RFP.

B. Legal Status of the Proposer and Signers. State the full, exact legal entity name of the proposer. State whether the proposer is an individual, corporation, limited partnership, general partnership, limited liability company, professional corporation, professional association, etc. If it is anything other than an individual or a general partnership, specify the State under which the entity is organized. If the State under which the entity is organized is not North Carolina, specify whether the proposer has received a certificate of authority from the N. C. Secretary of State to transact business in North Carolina. State whether the entity is in existence at the time the RFP is submitted, and if not, whether and when the proposer intends to officially form the entity. State the names and titles of the individuals who will sign any eventual agreement with the City.

B. Project Team, Location of Work, and Subcontracting. State the names, qualifications and physical office locations of the individuals whose experience and credentials contribute to the RFP. An organizational chart should be provided with key staff and/or management. RFPs should state to what extent, if any, the services contemplated under this RFP may be subcontracted. If a proposer intends to engage partners or specified subcontractors to qualify under the RFP, the proposer must identify in the RFP the names of the partner entities and/or subcontractors and the portions of the proposed services the third-party is qualified to perform.

## **80. EVALUATION CRITERIA**

Proposals will be reviewed and evaluated on a 100 point basis as specified below, plus the potential to earn bonus points.

A. Understanding the Project – 20%

Proposals will be evaluated against the questions set out below.

- a. How well has the responder demonstrated a thorough understanding of the purpose and scope of the project?

- b. How well has the responder identified pertinent issues and potential problems related to the project?
- c. Adherence to the City's EBOP program
- d. Has the responder identified the method by which a Period of Affordability will be established? Please explain.
- e. Has the responder indicated the minimum length of time the Period of Affordability will be imposed?
- f. Has the responder identified how many dwellings will be available to low-mod income individuals or families?

**B. Management Plan for the Project – 15%**

Proposals will be evaluated against the questions set out below.

- a. How well does the management plan illustrate how the work will be accomplished and does it meet the completion schedule?
- b. Is a detailed schedule provided for the completion of the installation of the infrastructure and dwellings/units?
- c. Has the responder included an overall design plan for the development of dwellings in the Beamon Street assemblage?
- d. Has the responder included renderings, plans, or elevations of all the dwellings proposed to be built and the square footage of each?
- e. Has the responder specified the materials to be used on the exterior of the buildings, such as Hardiplank, vinyl, etc.? Have the materials and interior finishes been specified?

**C. Marketing and Sales Methods – 20%**

Proposals will be evaluated against the questions set out below.

- a. Describe the firm's methods of marketing and selling homes, including the use of advertising, realtors, open house hours, etc
- b. Be specific and include the financial marketing/advertising financial contribution the firm is willing to make under each of the above scenarios.
- c. Do you have an established relationship with a lender included on the North Carolina Housing Finance Agency preferred lender list? If yes, please provide contact information for that individual and documentation of the lender's experience with NCHFA mortgage financing (ie. number of loans closed).
- d. What will the price range be for all affordable housing units built? For any rental properties proposed, please include a pro-forma.
- e. Will the sales of affordable housing require any subordinate financing from the City of other sources? If so, identify an amount and the proposed source of the funding and whether it applies to proposed homeowner units, or rental units..

**D. Experience and Qualifications – 20%**

Proposals will be evaluated against the questions set out below.

- a. Have the individuals assigned to the team been identified and do they have experience on similar projects? Discuss team members who will be part of marketing team, site prep and infrastructure team and general contractor.
- b. Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the project requires?
- c. How knowledgeable are the offeror's team of the local area and how many individuals have worked in the area previously?
- d. Experience of building and selling affordable housing in inner city neighborhoods. If so, how many?
- e. How well has the firm demonstrated experience in completing similar projects on time and within budget?
- f. Has the firm provided letters of reference from previous clients who have occupied their homes for at least one year? (minimum of 3 required)

E. Capacity – 25%

Proposals will be evaluated against the questions set out below.

- a. Does the applicant have availability of sufficient financial resources to complete the project. Provide a letter from a recognized lender evidencing the availability and amount of construction financing available for completion of site work and infrastructure and for construction financing for the dwelling units.
- b. Does the applicant require any financial or other contribution from the City to make this project feasible?
- c. If a financial contribution is required, how much is that contribution? Please explain in detail.
- d. If a non-monetary contribution is required from the City, please identify what that is. Please explain.
- e. Has applicant ever been a party to the following: foreclosure proceeding, bankruptcy, financial default in excess of 60 days, litigation relating to financing or construction of a project, which is pending or which was adjudged with a finding of liability against the builder, including mechanic's and materialmen's lien litigation. If yes, please explain.

F. **Bonus Points** for Extended Period of Affordability

- a. 0 - 5 years threshold minimum, no bonus points
- b. 6 – 10 years, 5 bonus points
- c. 11 – 15 years, 10 bonus points
- d. 16 – 20 years, 15 bonus points

**NOTE:**

It is anticipated that through this RFP the City may receive Proposals that are varied in the individual approach to the development of the subject property, including, but not limited to overall project costs, type of housing provided, period of affordability, timing, and projected City contribution. Although all Proposals will be evaluated using the criteria specified above, the City reserves the right to select any (or none) of the Proposals regardless of the overall score.

**The City may select a Proposal that it determines, in its sole discretion, best meets the City's overall development goals.**

## **90. NO COMPENSATION, INSURANCE, AND LEGAL RESPONSIBILITY**

A. City Role. N/A

B. No Compensation Express or Implied. No compensation shall be expressly due or implied to be due to any proposer unless and until a agreement is mutually negotiated between the parties, and thereafter approved by the Durham City Council or its designee, and has been fully executed by all parties. Said agreement shall dictate the terms upon which any eventual compensation may be earned.

C. Proposer to Bear Expense; No Claims Against City. No proposer will have any claims or rights against the City arising out of the participation by a proposer in the RFP process. No proposer will have any claims or rights against the City for the City's failure to enter into an agreement with the proposer or for entering into an agreement with another person, firm, or corporation, regardless of whether the other person, firm, or corporation participated in the RFP process or did not submit a RFP that complied with the RFP. A notice of intent to award will not constitute acceptance by the City; the City's only method of acceptance is the City's execution of a formal development agreement in accordance with law.

D. Assumptions Regarding City of Durham Actions and Participation. Should a proposer assume that the City will take certain actions, provide facilities, or do anything else; such assumptions shall be stated explicitly in the RFP.

E. Definitions: RFP, RFP, City, Proposer, Developer.

(a) The expressions "Request for Proposals," "this RFP," and "the RFP" refer to this document as it may be amended or updated.

(b) The "Request for Proposals," "RFP," or "the RFP" is the response of a person, firm, or entity proposing to provide the services sought by this RFP.

(c) "City" and "city" mean the City of Durham.

(d) The "Proposer" or "proposer" is the responding person, firm, or entity that submits a RFP.

F. Development Agreement. N/A

G. Trade Secrets and Confidentiality. As a general rule, all submissions to the City are available to any member of the public. However, if materials qualify as provided in this section, the City will take reasonable steps to keep trade secrets confidential.

Definitions.

In this section (Trade Secrets and Confidentiality) – The term “proposer” includes the proposer as Developer (that is, after it is a party to an agreement with the City).

The term “trade secret” means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

- a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and

- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.

The term “record” means all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, received by the City of Durham in connection with the proposer’s RFP.

(a) Designation of Confidential Records. To the extent that the proposer wishes to maintain the confidentiality of trade secrets contained in materials provided to the City, the proposer shall prominently designate the material with the words “trade secrets” at the time of its initial disclosure to the City. The proposer shall not designate any material provided to the City as trade secrets unless the proposer has a reasonable and good-faith belief that the material contains a trade secret. When requested by the City, the proposer shall promptly disclose to the City the proposer’s reasoning for designating material as trade secrets; the proposer may need to label parts of that reasoning as trade secrets. In providing materials to the City, the proposer shall make reasonable efforts to separate those designated as trade secrets from those not so designated, both to facilitate the City’s use of the materials and to minimize the opportunity for accidental disclosure. For instance, if only a sentence or paragraph on a page is a trade secret, the page must be marked clearly to communicate that distinction. To avoid mistake or confusion, it is generally best to have only trade secret information on a page and nothing else on that page.

To the extent authorized by applicable state and federal law, the City shall maintain the confidentiality of records designated “trade secrets” in accordance with this section. Whenever the proposer ceases to have a good-faith belief that a particular record contains a trade secret, it shall promptly notify the City.

(b) Request by Public for Access to Record. When any person requests the City to provide access to a record designated as a trade secret in accordance with subsection (a) above, the City may

- (1) decline the request for access,

(2) notify the proposer of the request and that the City has provided, or intends to provide, the person access to the record because applicable law requires that the access be granted, or

(3) notify the proposer of the request and that the City intends to decline the request.

Before declining the request, the City may require the proposer to give further assurances so that the City can be certain that the proposer will comply with subsection (c) below.

(c) Defense of City. If the City declines the request for access to a record designated as trade secrets in accordance with subsection (a), then, in consideration of the promises in (b) above and for considering the proposer's RFP, the proposer agrees that it shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of the City's non-disclosure of the records. In providing that defense, the proposer shall at its sole expense defend Indemnitees with legal counsel. The legal counsel shall be limited to attorneys reasonably acceptable to the City Attorney.

Definitions. As used in this subsection (c), "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, fines, penalties, settlements, expenses, attorneys' fees, and interest. "Indemnitees" means the City, and officers, officials, independent Proposers, agents, and employees, of the City. "Indemnitees" does not include the proposer. The City may require the proposer to provide proof of the proposer's ability to pay the amounts that may reasonably be expected to become monetary obligations of the proposer pursuant to this section. If the proposer fails to provide that proof in a timely manner, the City shall not be required to keep confidential the records whose non-disclosure gives rise to the potential monetary obligation. Nothing in this agreement shall require the City to require any person (including the City itself) to be placed in substantial risk of imprisonment, of being found by a court to be in contempt, or of being in violation of a court order. This subsection (c) is separate from and is to be construed separately from any other indemnification and warranty provisions in the contract between the City and the proposer.

H. Bonds. N/A

I. Insurance. Proposer agrees to maintain, on a primary basis and at its sole expense, at all times during the life of the submitted RFP, the following applicable coverage's and limits. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Proposer is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Proposer by submission of an RFP or entry into an eventual agreement.

Commercial General Liability – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any

endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

Additional Insured – Proposer agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read ‘City of Durham as its interest may appear’.

Certificate of Insurance – Proposer agrees to provide City of Durham a Certificate of Insurance evidencing that all coverage’s, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Proposer’s insurer. If Proposer receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Proposer agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham  
Attn: Office of Economic and Workforce Development  
101 City Hall Plaza  
Durham, NC 27701

All insurance companies must be authorized to do business in North Carolina and be acceptable to the City of Durham’s Risk Manager.

J. Equal Business Opportunity Program. It is the policy of the City to provide equal opportunities for City contracting for underutilized firms owned by minorities and women doing business in the City’s Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct present effects of past discrimination and to resolve complaints of discrimination. This policy applies to all professional services categories.

While there are no UBE participation goals for this project, in accordance with the Ordinance, all proposers are required to submit the Participation Documentation and the Employee Breakdown form. In lieu of the Employee Breakdown contractors may submit a copy of the current EEO-1 form (corporate basis). Proposals that do not contain the Participation Documentation form and Employee Breakdown may be deemed non-responsive and ineligible for consideration. The Letter of Intent to Perform as a Sub-consultant form included with the Equal Business Opportunity Program Professional Services forms should be completed only if an UBE firm will be utilized. These forms must be submitted with the proposal. The “UBE Goals Not Met/Documentation of Good Faith Efforts” form and the “Post Proposal Submission Deviation” form are not applicable at this time.



The Department of Equal Opportunity/Equity Assurance is responsible for the Equal Business Opportunity Program. All questions about Professional Services Forms should be referred to Deborah Giles or other department staff at (919) 560- 4180.



# **CITY OF DURHAM EQUAL BUSINESS OPPORTUNITY PROGRAM**

## **PROFESSIONAL SERVICES FORMS**

**Revised 03/2016**



**Phone: 919-560-4180**  
**Facsimile: 919-560-4513**

**Street Address:**  
**101 City Hall Plaza (Annex)**  
**Durham, North Carolina 27701**

## CITY OF DURHAM EQUAL BUSINESS OPPORTUNITY PROGRAM

### **Policy Statement**

It is the policy of the City to provide equal opportunities for City contracting to underutilized businesses owned by minorities and women doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct the present effects of past discrimination and to resolve complaints of discrimination.

### **Goals**

To increase the dollar value of all City contracts for goods and services awarded to minority and women business enterprises, it is a desire of the City that the contractor will voluntarily undertake efforts to increase the participation of minority and women individuals at higher skill and responsibility levels within non-minority firms engaged in contracting and subcontracting with the City.

The Equal Opportunity/Equity Assurance Director shall determine participation goals based upon the availability of minority and women business enterprises (MWBES) within the defined scope of contracting, and the goals established for the contracting category.

### **Equal Business Opportunity Program UBE Participation Documentation**

**If applicable information is not submitted with your proposal, your proposal may be deemed non-responsive.**

### **UBE Participation Documentation**

Must be used to document participation of an underutilized business enterprise (UBE) on Professional Services projects. All UBEs must be certified by the State of North Carolina as a historically underutilized business, the North Carolina Department of Transportation as a minority-owned or women-owned business or the U.S. Small Business Administration's 8(a) Business Development Program prior to the submission date. If a business listed has not been certified, the amount of participation will be reduced from the total utilization.

### **Employee Breakdown**

Must be completed and submitted for the location providing the service/commodity. If the parent company will be involved in providing the service/commodity on the City contract, a consolidated employment breakdown must be submitted.

### **Letter of Intent to Perform as a Sub-consultant/Subcontractor**

Must be completed for UBEs proposed to perform on a contract. This form must be submitted with the proposal.

### **Post Proposal Submission UBE Deviation**

Post proposal submission UBE deviation participation documentation must be used to report any deviation from UBE participation either prior to or subsequent to startup of the project. The Equal Opportunity/Equity Assurance Department must be notified if the proposed sub-consultant/subcontractor is unable to perform and for what reasons. Substitutions of sub-consultants/subcontractor, both prior to and after awarding of a contract, are subject to City approval.

### **UBE Goals Not Met/Documentation of Good Faith Efforts**

It is the responsibility of consultants/contractors to make good faith efforts. Good Faith Efforts means the sum total of efforts by a particular business to provide equitable participation of minority-owned and women-owned individuals or businesses as sub-consultants/subcontractors.

Whenever contract alternatives, amendments or extra work orders are made individually or in the aggregate, which increase the total value of the original contract, the consultant must make a good faith effort to increase UBE participation such that the amounts subcontracted are consistent with the established goals.

## **SELECTION OF CONSULTANTS/CONTRACTORS FOR ARCHITECTURAL/ENGINEERING AND OTHER PROFESSIONAL SERVICES**

### **Goal**

The purpose is to provide underutilized business enterprises owned by minorities and women with equal opportunities for participation on City of Durham contracts.

### **Definition of the Scope of the Selection Policy**

The Equal Opportunity/Equity Assurance Director shall determine UBE participation goals for each contracting category to be awarded by the City. Goals for each project or contract will be based upon the availability of underutilized business enterprises (UBE's) within the defined scope of work, delineated into percentages of the total value of the work.

The City of Durham will consider a formal certification of the State of North Carolina's Historically Underutilized Businesses (HUB) Office, North Carolina Department of Transportation (N.C. DOT) minority and women businesses and the United States Small Business Administration (U.S. SBA) 8(a) Development Program as meeting the requirements of the Equal Business Opportunity Program, provided there is evidence that the firm is currently certified by one of the stated entities.

### **Underutilized Business Proposal Requirements**

The prime consultant/contractor shall submit a proposal in accordance with the City of Durham's request for Proposal. In addition, the prime consultant/contractor must submit all required Professional Services Forms.

### **Selection Committee for Professional Services**

A selection committee shall be established and may be composed of the following: City Manager or a designated representative of this office; Director of Finance or a designated representative of this office; department head responsible for the project; City Engineer if engineering services are involved; the Equal Opportunity/Equity Assurance Director or designee and Purchasing Manager or designee. Other representatives shall be called upon as needed based on their areas of expertise.

The committee shall screen the proposals based on the following criteria:

1. Firms; interest in the project;
2. Current work in progress by firm;
3. Past experience with similar projects;
4. General proposal for carrying out the required work;
5. Designation of key personnel who will handle the project, with resume for each;
6. Proposed associate consultants/contractors, UBE subconsultants;
7. Indication of capability for handling project;
8. Familiarity with the project;
9. Fees that have been charged for recent comparable projects;
10. References;
11. UBE Participation; and
12. Documentation of Good Faith efforts should UBE participation requirements not be met.

After ranking the firms presenting proposals based on the above criteria, interviews will be conducted by the selection committee with the top ranked firms (3-5). The contracting department will make the final recommendation, prepare contracts for review by the City Attorney, and prepare the recommendation for the City Council including the following:

1. Description and scope of the project;
2. Recommended firm;
3. Contract cost;
4. Time limits;
5. Basis for selection;
6. Source for funding;
7. Equal Business Opportunity Ordinance compliance; and
8. Recommendation that the contract be approved by the City Council.

### **Contract Award**

A provision must be written in each contract with an architect or engineer requiring them to work with Equal Opportunity/Equity Assurance Department in creating and identifying separate work.

### **Project Evaluation**

An evaluation shall be made of each contract after its completion to be used in consideration of future professional services contracts. The evaluation shall cover appropriate items from the check list for ranking applicants. A copy of the evaluation shall be given to the consultant, and any comment he/she cares to make shall be included in the files.

### **PARTICIPATION DOCUMENTATION (TO BE COMPLETED BY PRIME CONSULTANT/CONTRACTOR ONLY)**

**Names of all firms  
Project (including  
prime and  
subconsultants/sub  
- contractors)**

**Location**

**UBE  
Firm  
Yes/No**

**Nature  
of  
Participation**

**% of Project  
Work**

		Yes ( ) No ( )		
		Yes ( ) No ( )		
		Yes ( ) No ( )		
		Yes ( ) No ( )		
		Yes ( ) No ( )		
		Yes ( ) No ( )		
		Yes ( ) No ( )		

**TOTAL** \_\_\_\_\_

\_\_\_\_\_  
Name - Authorized Officer of Prime Consultant/Contractor Firm (Print/Type)

\_\_\_\_\_  
Signature - Authorized Officer of Prime Consultant/Contractor Firm

\_\_\_\_\_  
Date

**COMPLETE THIS FORM OR ATTACH COMPUTERIZED FORM  
EMPLOYEE BREAKDOWN**

(EEO-1 Report may be submitted in lieu of this form.)

**Part A – Employee Statistics for the Primary Location**

M— a — l — e — s									F— e — m — a — l — e — s				
Employment category	Total Employees	Total males	Total females	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manager													
Professional													
Technical													
Clerical													
Labor													
Totals													

**Part B – Employee Statistics for the Consolidated Company (See instructions for this form on whether this part is required.)**

M— a — l — e — s									F— e — m — a — l — e — s				
Employment category	Total Employees	Total males	Total females	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manager													
Professional													
Technical													

Clerical													
Labor													
Totals													

### Letter of Intent to Perform as a Sub-Consultant

The undersigned intends to perform work in connection with the above project as a UBE:

Minority(African American, American Indian, Asian or Hispanic)      Woman

The UBE status of the undersigned is certified if identified as HUB certified by the N.C Department of Administration HUB Office, minority or women certified by the N.C. Department of Transportation and 8(a) certified by the U.S. Small Business Administration.

The undersigned is prepared to perform the following described work in connection with the above project (specify in detail particular work items or parts thereof to be performed):

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

<u>ITEMS</u>	<u>PROJECTED COMMENCEMENT DATE</u>	<u>PROJECTED COMPLETION DATE</u>

The consultant will subcontract \_\_\_\_\_% of the dollar value of this contract to UBE sub-consultant.

The undersigned will enter into a formal agreement in the amount of \$\_\_\_\_\_ for the above work.

Name\_\_\_\_\_ Title\_\_\_\_\_ Company\_\_\_ Telephone\_\_\_ Address\_\_\_ State\_\_\_

## REQUEST TO CHANGE UBE PARTICIPATION

Project: \_\_\_\_\_

Name of bidder or consultant: \_\_\_\_\_

Name and title of representative of bidder or consultant: \_\_\_\_\_

Address: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email address: \_\_\_\_\_

Total amount of original contract, before any change orders or amendments: \_\_\_\_\_

Total amount of the contract, including all approved change orders and amendments to date, but not counting the changes proposed in this form: \_\_\_\_\_

Dollar amount of changes proposed in this form: \_\_\_\_\_

The proposed change (*check one*) ☐ **increases** ☐ **decreases** the dollar amount of the bidder's/consultant's contract with the City.

Does the proposed change decrease the UBE participation? (*check one*) ☐ **yes** ☐ **no**

If the answer is **yes**, complete the following:

**BOX A.** For the subcontract proposed to be changed (increased, reduced, or eliminated): Name of subcontractant \_\_\_\_\_

Goods and services to be provided before the proposed change: \_\_\_\_\_  
\_\_\_\_\_

***Is it proposed to eliminate this subcontract?*** ☐ **yes** ☐ **no**

If the subcontract is to be increased or reduced, describe the nature of the change (*such as adding \$5,000 in environmental work and deleting \$7,000 in architectural*): \_\_\_\_\_  
\_\_\_\_\_

Dollar amount of this subcontract before this proposed change: \_\_\_\_\_



Dollar amount of this subcontract after this proposed change: \_\_\_\_\_

This subcontractor is (check one):

- ☐ 1. Minority-owned UBE
- ☐ 2. Women-Owned UBE
- ☐ 3. Not a UBE

**BOX B. Proposed subcontracts other than the subcontract described in Box A above (continued)**

Name of sub-consultant for the new work: \_\_\_\_\_

Goods and Services to be provided by this proposed subcontract: \_\_\_\_\_

Dollar amount proposed of this proposed subcontract: This sub-consultant is:

- ☐ 1. Minority-owned UBE
- ☐ 2. Women-Owned UBE
- ☐ 3. Not a UBE

Add additional sheets as necessary.

**UBE GOALS NOT HAVING BEEN MET. The following information must be presented by the consultant concerning good faith efforts taken.**

It is the responsibility of consultants to make good faith efforts. Any act or omission by the City shall not relieve them of this responsibility. For future efforts, it shall be comprised of such efforts which are proposed to allow equitable participation of socially and economically disadvantaged employees and sub- consultants/subcontractors. The City Manager shall apply the following criteria, with due consideration of the quality, quantity, intensity and timeliness of efforts of consultants/contractors, in determining good faith efforts to engage UBEs along with other criteria that the City Manager deems proper:

Name of Bidder: \_\_\_\_\_

*If you find it helpful, feel free to attach pages to explain your answers. How many pages is your firm attaching to this questionnaire? \_\_\_\_\_ questionnaire.)*

*(Don't count the 2 pages of this questionnaire.)*

***If a yes or no answer is not appropriate, please explain the facts. All of the answers to these questions relate only to the time before your firm submitted its bid or proposal to the City. In other words, actions that your firm took after it submitted the bid or proposal to the City cannot be mentioned or used in any answers.***

**1. SOLICITING UBEs.**

- (a) Did your firm solicit, through all reasonable and available means, the interest of all UBEs in the list provided by the City in the scope of work of the contract? ☐ **yes** ☐ **no**

In such soliciting, did your firm advertise? ☐ **yes** ☐ **no** Are you attaching copies to this questionnaire, indicating the dates and names of newspaper or other publication for each ad if that information is not already on the ads? ☐ **yes** ☐ **no**

- (b) In such soliciting, did your firm send written (including electronic) notices or letters? Are you attaching one or more sample notices or letters? ☐ **yes** ☐ **no**

- (c) Did your firm attend the pre-bid conference? ☐ **yes** ☐ **no**

- (d) Did your firm provide interested UBEs with timely, adequate information about the plans, specifications, and requirements of the contract? ☐ **yes** ☐ **no**

- (e) Did your firm follow up with UBEs that showed interest? ☐ **yes** ☐ **no**

- (f) With reference to the UBEs that your firm notified of the type of work to be subcontracted, did your firm tell them:

(i) the specific work your firm was considering for subcontracting? ☐ **yes** ☐ **no**

(ii) that their interest in the contract is being solicited? ☐ **yes** ☐ **no**

(iii) how to obtain and inspect the applicable plans and specifications and descriptions of items to be purchased? ☐ **yes** ☐ **no**

**2. BREAKING DOWN THE WORK.**

- (a) Did your firm select portions of the work to be performed by UBEs in order to increase the likelihood that the goals would be reached? ☐ **yes** ☐ **no**

- (b) If **yes**, please describe the portions selected. **ANSWER:**

**3. NEGOTIATION.** In your answers to 3, you may omit information regarding UBEs for which you are providing a Letter of Intent.

- (a) What are the names, addresses, and telephone numbers of UBEs that you contacted? **ANSWER:**

- (b) Describe the information that you provided to the UBEs regarding the plans and specifications for the work selected for potential subcontracting. **ANSWER:**

- (c) Why could your firm not reach agreements with the UBEs that your firm made contact with? Be

specific. **ANSWER:**

**4. ASSISTANCE TO UBEs ON BONDING, CREDIT, AND INSURANCE.**

- (a) Did your firm or the City require any subcontractors to have bonds, lines of credit, or insurance?  
☐ yes ☐ no (Note: In most projects, the City has no such requirement for *subcontractors*.)
- (b) If the answer to (a) is **yes**, did your firm make efforts to assist UBEs to obtain bonds, lines of credit, or insurance? ☐ **yes** ☐ **no** If **yes**, describe your firm's efforts. **ANSWER:**
- (c) Did your firm provide alternatives to bonding or insurance for potential subcontractors?  
☐ **yes** ☐ **no** If **yes**, describe. **ANSWER:**

**5. GOODS AND SERVICES.** What efforts did your firm make to help interested UBEs to obtain goods or services relevant to the proposed subcontracting work? **ANSWER:**

**6. USING OTHER SERVICES.**

- (a) Did your firm use the services of the City to help solicit UBEs for the work? ☐ **yes** ☐ **no**  
Please explain. **ANSWER:**
- (b) Did your firm use the services of available minority/women community organizations, minority and women contractors' groups, government-sponsored minority/women business assistance agencies, and other appropriate organizations to help solicit UBEs for the work? ☐ **yes** ☐ **no**  
Please explain. **ANSWER:**

For homebuilding in the Southside project, the construction goals will be MUBE 11% and WUBE 7%. Each respondent must submit an Equal Business Opportunity Plan which is a narrative document that shall address the following issues:

- Use of the Office of Historically Underutilized Businesses (HUB) database.
- Provision of written notice to all UBE's listed in the HUB database that might perform the work to be subcontracted.
- Selection of feasible portions of work to be performed by UBE's.
- Consideration of all proposals received from UBE's.
- Provision of assistance in reviewing applicable plans, specifications and descriptions of items in a proposed project.
- Advertisement in general circulation, trade association and minority/women focus media in concerning subcontracting opportunities.
- Timeliness of advertisements to permit sufficient time for response by UBE's.
- Provision of written notice to a reasonable number of specific UBE's that their interest is being solicited in sufficient time for effective participation.
- Follow-up to determine with certainty UBE interest in participation in project.

- Use of available minority/women business community organizations, contractor groups; local, state and federal business assistance offices; and other organizations that provide assistance in recruitment and placement of UBE's.
- Voluntary efforts by your firm to increase the number of minorities and women at the higher skill responsibility levels within the firm.

K. Notice Under the Americans with Disabilities Act. The City of Durham will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Anyone who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in the City program, service, or activity, should contact Ms. Stacey Poston, ADA Coordinator, voice 919-560-4197 ext. 21254, fax 560-4196, TTY 919-560-1200, or Stacey.Poston@durhamnc.gov, as soon as possible but no later than 48 hours before the scheduled event.

#### L. Values of City of Durham Regarding Treatment of Employees of Proposers

(a) Statement of City EEO Policy. The City of Durham opposes discrimination in employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Therefore, it desires that firms doing business with the City:

- 1) Not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
- 2) Take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. This action includes employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 3) State, in solicitations or advertisement for employees, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
- 4) Include this Statement of City EEO Policy in every purchase order for goods to be used in performing City contracts and in every subcontract related to City contracts.

(b) Livable Wage. The City of Durham desires that firms doing business with the City pay their workers an hourly wage while working on City contracts such that, if annualized, a person working 40 hours per week will earn enough money to support

a family of four above the poverty level, as poverty is defined by the United States Census Bureau. As of January 1, 2016, that wage is \$12.53 per hour. That wage is adjusted annually, and the wage as adjusted will be posted on the City's Purchasing Division web page. The City's desire is that firms pay the wage as adjusted from time to time.

M. Workforce Plan and Durham-Based Business Plan Conditions. N/A

N. Conflict of Interest. If the proposer has any grounds to believe there could be a conflict of interest, such as that a City employee who is involved in evaluating the RFP has a connection with the proposer, please disclose.

O. Non-collusion. This solicitation is an invitation to submit qualifications. A statement expressing the following shall be included it with each submission:

*The City of Durham prohibits collusion, which is defined as a secret agreement for a deceitful or fraudulent purpose.*

*I, \_\_\_\_\_ affirm that I have not engaged in collusion with any City employee (s), other person, corporations, or firms relating to this bid, RFPs or quotations. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.*

*Signature: \_\_\_\_\_*

P. Discretion of the City.

(a) The City of Durham reserves the right to reject any or all RFPs.

(b) NOTWITHSTANDING anything to the contrary in this document or in any addendums to this document, unless the contrary provision refers specifically to this provision, the City reserves the right (i) to negotiate changes of any nature with any proposer with respect to any term, condition, or provision in this document and/or in any RFPs, whether or not something is stated to be mandatory and whether or not it is said that a RFP will be rejected if certain information or documentation is not submitted with it, and (ii) to enter into an agreement for some or all of the work with one or more persons, firms, or corporations that do not submit RFPs. For example, all deadlines are for the administrative convenience or needs of the City and may be waived by the City at its sole discretion. This subparagraph B applies to the entire RFP, including the SDBE portions.

(c) Where the City asks or tells proposers to do stated things, such as that a RFP should follow a stated format or that the proposer should do stated things in seeking selection, the City may reject a RFP because it does not comply with those requests, so the proposer is adding to its risk of rejection by non-compliance. Still, the City may, at its discretion, waive non-compliance. This subsection (c) does not limit subsections (a) and (b).

(d) Of course, once an agreement is signed, the parties to the agreement may enforce the agreement according to its terms as allowed by applicable law.

---- End of RFP ---

## SAMPLE CONTRACT

[Exhibit A to RFP (Model Services Contract)]

[City staff – The most recent changes to this contract are these: On 10-30-2015, the E-Verify Requirements clause was added to section 14. On 2-26-2016 and 3-3-2016, the Iran Divestment Act Certification clause was added and modified; it's in section 14. Due to a change in the official statute number, the Iran Divestment Act Certification clause was changed on 3-30-2016. Because of the new UBE ordinance, on 4-5-2016 the title of the SDBE clause was changed to EBOP, but the contents of the clause remain the same. On 4-22-16, I added a not-to-exceed amount option to the end of section 5. On 8-15-2016 I added to the instructions for the Background and Purpose section.]

Please see note 5 (Instructions to City staff) at the end of this contract for the meaning of asterisks, including this asterisk: \*]

CONTRACT FOR [descriptive title to be inserted\*]

This contract is dated, made, and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the City of Durham ("City"), a N. C. municipal corporation, and [name of firm] ("Contractor"), [Indicate type of entity, for instance:

a corporation organized and existing under the laws of [name of State];  
a limited liability company organized and existing under the laws of [name of State];  
a professional corporation organized and existing under the laws of [name of State];  
a professional association organized and existing under the laws of [name of State];  
a limited partnership organized and existing under the laws of [name of State];  
a sole proprietorship;  
or a general partnership

If it's a corporation, LLC, or limited partnership, use the above "organized and existing" language, and do not substitute news about the contractor's principal office or place of business.].

Sec. 1. Background and Purpose. [Several sentences are usually enough. Don't put sentences here if you want to be able to enforce them. You have all the other sections of the contract for enforceable sentences.\*]

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor's. The Contractor shall [state the services to be provided and the schedule for those services.\*]. In this contract, "Work" means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 3. Reserved.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Contractor's Billings to City. Compensation. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. [City staff - Add any special requirements or detail needed in the invoices.\*\*] Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall pay the Contractor for the Work as follows: [City staff - Describe the timing of payments, how amounts are calculated, etc. List the kinds of expenses, if any, that the City will reimburse.\*\*]. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section. [If applicable, you can add a sentence to this effect\*: The total dollar amount to be paid under this contract by the City to the Contractor shall not exceed \$(insert amount).]

Sec. 6. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the

Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8<sup>th</sup> day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled "Prompt Payment to Subcontractors," he or she will be referred to as the "Project Manager") determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be

(i) the amount of interest due to the Subcontractor under subsection (a), and/or

(ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled "Prompt Payment to Subcontractors") shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 7. Insurance. [City staff—to be filled in. Consult Risk Management.\*]

Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule required by this contract, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section. [City staff—Regarding the first sentence of this section: It is possible that - and acceptable if -- the schedule is not called "schedule." The schedule may be scattered about the contract. Try to indicate where the schedule is; an improved sentence might read: If the Contractor fails to perform the Work in accordance with the schedule required by this contract, including the schedule required by section \_\_, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies.\*]

Sec. 9. Exhibits. The following exhibits are made a part of this contract: [If none, write "None." Try to put your requirements, etc. into Section 2 and Section 3 of this contract, or in other appropriate places in this contract, instead of in exhibits. Unless what you want to say is really long, don't use an exhibit. It's easier to keep track of text that is in the middle of the contract and even makes it easier to number the pages. Heavy use of exhibits probably goes back to pre-computer days, when it was hard to cut and paste.\*]

Exhibit A [Insert title of exhibit] containing [insert number] page(s).

Exhibit B [Insert title of exhibit] containing [insert number] page(s).

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 10. Notice. (a) This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term. All such notices shall be given by personal delivery, fax, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

[Insert name and department\*]

City of Durham

101 City Hall Plaza

Durham, NC 27701-3329

The fax number is (919) [Insert fax number.\*]

Email: [Insert email address.\*]



To the Contractor:  
[Insert name and address]  
The fax number is \_\_\_\_\_.  
Email:

(b) Change of Address. Date Notice Deemed Given. A change of address, email address, fax number, or person to receive notices under subsection (a) shall be made by notice given pursuant to subsection (a). All notices and other communications related to or under this contract shall be deemed given and sent at the time of actual delivery, if personally delivered or sent by fax, personal delivery, UPS, Federal Express, or a designated delivery service. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 12. Trade Secrets; Confidentiality. The request for proposals (RFP) section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP). This section (titled "Trade Secrets; Confidentiality") shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. For purposes of this contract, the word "candidate" in the RFP section just cited shall mean the "Contractor."

Sec. 13. Termination for Convenience ("TFC"). (a) Procedure. Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) Obligations. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) Payment. The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to

any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

**Sec. 14. State Law Provisions.**

**(a) E-Verify Requirements.** (A) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (A) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (A) in entering into this contract. (B) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

**(b) Iran Divestment Act Certification.** The Contractor certifies that, if it submitted a successful bid for this contract, then as of the date it submitted the bid, the Contractor was not identified on the Iran List. If it did not submit a bid for this contract, the Contractor certifies that as of the date that this contract is entered into, the Contractor is not identified on the Iran List. It is a material breach of contract for the Contractor to be identified on the Iran List during the term of this contract or to utilize on this contract any subcontractor that is identified on the Iran List. In this Iran Divestment Act Certification section -- "Contractor" means the person entering into this contract with the City of Durham; and "Iran List" means the Final Divestment List – Iran, the Parent and Subsidiary Guidance– Iran list, and all other lists issued from time to time by the N.C. State Treasurer to comply with G. S. 147-86.58 of the N.C. Iran Divestment Act.

**Sec. 15. Miscellaneous**

**(a) Choice of Law and Forum; Service of Process.** (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

**(b) Waiver.** No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

**(c) Performance of Government Functions.** Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

**(d) Severability.** If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

**(e) Assignment. Successors and Assigns.** Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

**(f) Compliance with Law.** In performing all of the Work, the Contractor shall comply with all applicable law.

**(g) Notice of City Policy.** THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

**(h) EBOP.** The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the

Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(i) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(j) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(k) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(l) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

CITY OF DURHAM

\_\_\_\_\_ By: \_\_\_\_\_

preaudit certificate, if applicable \_\_\_\_\_

[Notes to City staff –

*1. TFC. See Section 12, the Termination for Convenience (TFC) clause. Decide whether the contract should contain that clause. You may find that a TFC clause makes the contract less attractive to firms. If you delete it, do so in a way that it reads "Sec. 12. Reserved."*

*For a discussion of the pros and cons of a TFC clause, see Section 480 (Terminating without cause or for convenience) of GBA on the City Attorney's CODI page, under the title Contracting Guides and Forms.*

*2. Headers and footers. Place a header or footer on each page of this contract (putting it on page 1 is at your option) to the following effect:*

*[Insert the name of the contract] between the City of Durham and [name of Contractor], page [insert page number]*

3. City's signature. For the City's signature form, see Section 902 (Getting contracts signed by the contractor and the City) of GBA on the City Attorney's CODI page, under the title Contracting Guides and Forms. The City signature form that appears at the end of the above contract is the one used nearly all the time. If that is the one that you will use: to keep it spaced properly, leave it in Times New Roman with a font size of 10, and keep it (the ATTEST line and the preaudit line) together, on the same page. It's fine if it shares a page with the contract.

4. Contractor's signature and acknowledgment. For the Contractor's execution forms, see Appendixes E and F to GBSB on the City Attorney's CODI page, under the title Contracting Guides and Forms. Write the Contractor's name in the Contractor's signature form and in the form by which the Contractor's signature is notarized.

5. IDAC List. Be sure the Contractor is not on the Final Divestment List on the N. C. State Treasurer's web page at

**<https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.aspx>**

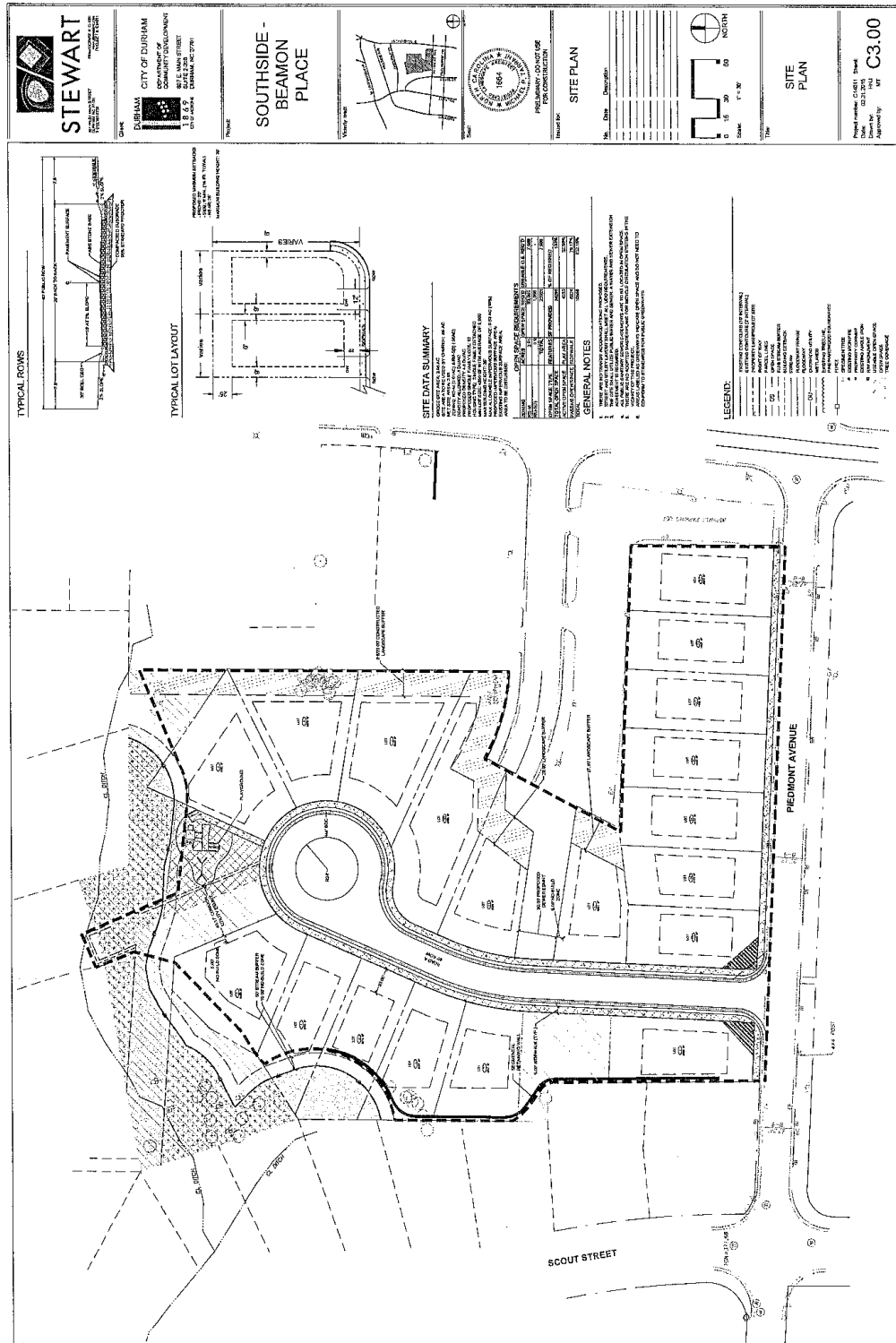
6. Instructions to City staff. In this contract, I inserted a number of instructions in italics, placed in brackets. Those are instructions for you! When do you delete them from this contract?

- (a) Before you send the RFP out to potential candidates or posting it on the City's Internet site, in most cases you should delete all the instructions that end with one asterisk (\*) along with this set of instructions.
- (b) As to any instruction that ends with two asterisks (\*\*) -- if you can comply with the instruction before sending the RFP out or posting it, you should delete that instruction. If you cannot comply with the instruction yet, you can keep it in the contract as a reminder to yourself.
- (c) As to instructions that don't end with any asterisks -- leave them in the RFP that you send out and post on the Internet. Once you select the contractor and work out the details of the deal, you will be able to comply with those instructions, at which time you'll delete those remaining instructions. That means that when it's time for the contract to be signed, all the instructions will be deleted.]

# EXHIBIT "A"

HOME Income & Rent Limits - Durham Metro Area								
NOTE: For all HOME-assisted rental units, the <u>maximum allowable total rent</u> is the Low HOME Rent for households with annual incomes at or below 50% Area Median Income (AMI) - or the High HOME Rent for households with annual incomes between 50% and 80% AMI - or the Fair Market Rent for household with annual incomes above 80% AMI - but none shall exceed the HUD-published Fair Market Rent. Both Low and High HOME rent limits include utility costs, which must be <u>deducted</u> to establish <u>maximum lease rents</u> .								
2016 - Income & Rent Limits - Effective 6/6/2016								
5/18/2016_ses+wc								
2016 INCOME Limits based on Number of Persons in Household - Durham, NC - Published 5/13/2016								
HH Income as % of AMI	1	2	3	4	5	6	7	8+
30% (extremely low)	\$14,850	\$17,000	\$19,100	\$21,200	\$22,900	\$24,600	\$26,300	\$28,000
35%	\$17,325	\$19,810	\$22,295	\$24,745	\$26,740	\$28,735	\$30,695	\$32,690
40%	\$19,800	\$22,640	\$25,480	\$28,280	\$30,560	\$32,840	\$35,080	\$37,360
45%	\$22,275	\$25,470	\$28,665	\$31,815	\$34,380	\$36,945	\$39,465	\$42,030
50% (very low)	\$24,750	\$28,300	\$31,850	\$35,350	\$38,200	\$41,050	\$43,850	\$46,700
60%	\$29,700	\$33,960	\$38,220	\$42,420	\$45,840	\$49,260	\$52,620	\$56,040
80% (low)	\$39,600	\$45,250	\$50,900	\$56,550	\$61,100	\$65,600	\$70,150	\$74,650
100% (median)	\$49,500	\$56,600	\$63,700	\$70,700	\$76,400	\$82,100	\$87,700	\$93,400
120%	\$59,400	\$67,850	\$76,350	\$84,850	\$91,650	\$98,400	\$105,200	\$112,000
2016 RENT Limits, based on Number of Bedrooms (all include utility allowances) - Published 5/13/2016								
Rent Standard	Efficiency	1BR	2BR	3BR	4BR	5BR	6BR	
Low HOME Rent	\$618	\$663	\$796	\$919	\$1,026	\$1,131	\$1,237	
High HOME Rent	\$639	\$796	\$937	\$1,200	\$1,319	\$1,437	\$1,555	
FMR	\$639	\$796	\$937	\$1,262	\$1,405	\$1,616	\$1,827	

Exhibit B



[illegible]